1. S.B. CIVIL REVISION PETITION NO.326/2005
Baldev Chand Sharma vs. Rajasthan Financial Corp.

2. S.B. CIVIL REVISION PETITION NO.327/2005
Balwant Singh vs. Rajasthan Financial Corp.

Date : 9.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Goyal, for the petitioner.

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Heard learned counsel for the petitioner.

Both these revision petitions are having common question of fact and law, hence, both these revision petitions are decided by this common judgment by taking facts of SB Civil Revision Petition No.326/2005.

The petitioner is aggrieved against the order dated 2.4.2005 by which the petitioner's application for grant of interim stay against the sale of the property in execution was rejected by the executing court.

According to learned counsel for the petitioner, the petitioner purchased the property in dispute by a deed dated 6.4.1989 from the judgment debtor, the petitioner paid entire consideration for the property and, therefore, according to learned counsel for the petitioner, the defence of the petitioner is two folds – one is that he purchased the property in dispute and, therefore, he is in possession of the property in his own right and second is

that he acquired title by adverse possession.

Learned counsel for the petitioner vehemently submits that in view of the judgment of the Hon'ble Supreme Court delivered in the case of Bondar Singh and others vs. Nihal Singh and others reported in 2003(2) WLC (SC) P.333, even in a case where there is agreement to sale, he can assert his hostile title by acquiring title by adverse possession. It is also submitted that the Hon'ble Supreme Court held that even when the sale deed or agreement for sale of property is not properly stamped, then also that document can be looked into for collateral purpose. The Hon'ble Supreme Court also upheld the plea of adverse possession against the owner of the property despite the fact that that person had agreement for sale of the property from the owner of the property.

According to learned counsel for the petitioner, in view of the specific provision under Order 21 Rule 59 CPC where any claim or objection is preferred in execution petition against the attached property, then the Court should postpone the sale of the property during the pendency of the claim or objection.

I have considered the submissions of learned counsel for the petitioner.

It is the case of the petitioner that he entered into agreement for purchase of the property on 6.4.1989.

Admittedly, the sale deed has not been executed yet despite the fact that more than 16 years have passed. Prima-facie, there is no sufficient pleading so as to assert the hostile title against the seller and it appears from the facts of the Bondar Singh's case (supra) that in that case the agreement for sale was of the date 9.5.1931. There was exchange of notices and thereafter, proceedings were taken under Section 58 of the Madhaya Bharat Land Revenue and Tenancy Act, 1950 wherein the stand of the person who had agreement to sell in his favour was recognised and thereafter, the other party filed suit for possession on 15.4.1972. Therefore, in that case, there was assertion of hostile title against the person who agreed to sell the property was from the year 1931 to the date of filing of the suit i.e. upto the year 1972 and that was the reason by which the Hon'ble Supreme Court in regular appeal declared the person in possession as owner of the property by adverse possession. Those facts cannot be applied here by any stretch of imagination.

It will be worthwhile to mention here that the plot has been put to auction on obtaining decree by the respondent RFC and the plot has been attached by the Court as the alleged seller was the guarantor of the loan amount of the original borrower.

In the above facts, the executing court rightly considered the application for grant of interim injunction and rejected the petitioner's claim and there is no illegality even if it is assumed that there is agreement to

sale in favour of the petitioner.

So far as contention of learned counsel for the petitioner that as per Order 21 Rule 59 CPC, the Court should have postponed the sale is concerned, that is a discretion given to the Court and it is not a provision which mandates the Court to stay the sale simply because someone has raised objection. Equitable relief can be granted on the basis of equitable reasons. In this case, there appears to be no reason to postpone the sale of the property merely because the objection petition filed by the petitioner is pending. It is not the law that in all cases of objection based on claim of title to the property in case the objection petition is not dismissed forthwith the court is bound to stay the sale of the property. The objector is required to prove case for grant of interim relief because by such interim relief, decree holder's rights are affected.

In view of the above, I do not find that the court below has committed any illegality in rejecting the petitioner's application for temporary injunction in execution proceedings.

Accordingly, these revision petitions, having no merit, are hereby dismissed.

However, it is made clear that all what has been observed by the executing court on 2.4.2005 and by this Court in this order are only prima-facie observations with

respect to pleading and proof and the case set up by the petitioner. Therefore, the objection petition of the petitioner may be decided by the executing court uninfluenced by the finding recorded by the executing court in its order dated 2.4.2005 and by this Court in this order.

(PRAKASH TATIA), J.

S.Phophaliya